



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R07-RCRA-2014-0452; FRL-9919-72-Region-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting the petition submitted by John Deere Des Moines Works (John Deere) of Deere & Company, in Ankeny, Iowa to exclude or "delist" up to 600 tons per calendar year of F006/F019 wastewater treatment sludge filter cake generated by John Deere's wastewater treatment system from the list of hazardous wastes. This final rule responds to a petition submitted by John Deere to delist up to 600 tons per calendar year of F006/F019 wastewater treatment sludge filter cake generated by John Deere's wastewater treatment system from the list of hazardous wastes.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. The F006/F019 exclusion is a conditional exclusion for 600 cubic yards per year of the F006/F019 wastewater treatment sludge.

Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

DATES: This final rule is effective on [insert date of **FEDERAL REGISTER** publication].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R07-RCRA-2014-0452. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g. CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy by contacting the further information contact below. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of \$0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: Kenneth Herstowski, Waste Remediation and Permits Branch, Air and Waste Management Division, EPA Region 7, 11201 Renner Blvd., Lenexa, KS 66219; telephone number (913) 551-7631; email address: herstowski.ken@epa.gov.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

- A. What Action is EPA Finalizing?
- B. Why is EPA Approving this Action?
- C. What are the Limits of this Exclusion?
- D. How will John Deere Manage the Waste, when Delisted?
- E. When is the Final Delisting Exclusion Effective?
- F. How Does this Final Rule Affect States?

II. Background

- A. What is a Delisting Petition?
- B. What Regulations Allow Facilities to Delist a Waste?
- C. What Information Must the Generator Supply?

III. EPA's Evaluation of the Waste Information and Data

- A. What Waste did John Deere Petition EPA to Delist?
- B. How Much Waste did John Deere Propose to Delist?
- C. How did John Deere Sample and Analyze the Waste Data in

This Petition?

IV. Public Comments Received on the Proposed Exclusions

V. Statutory and Executive Order Reviews

I. Overview Information

A. What Action is EPA Finalizing?

After evaluating the petition for John Deere, EPA proposed, on August 20, 2014 (79 FR 49252), to exclude the waste from the lists of hazardous waste under section 261.31. EPA is finalizing the decision to grant John Deere's delisting petition to have its F006/F019 wastewater treatment sludge excluded, or delisted, from the definition of a hazardous waste, once it is disposed in a Subtitle D landfill.

B. Why is EPA Approving this Action?

John Deere's petition requests a delisting from the F006/F019 waste listing under 40 CFR 260.20 and 260.22. John

Deere does not believe that the petitioned waste meets the criteria for which EPA listed it. John Deere also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See Section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)-(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in Sec. 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition). EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. EPA considered whether the waste is acutely toxic, the concentrations of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the

petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist the waste from John Deere's facility is based on the information submitted in support of this rule, including a description of the waste and analytical data from the John Deere Des Moines, Ankeny, Iowa, facility.

C. What are the Limits of this Exclusion?

This exclusion applies to the waste described in John Deere's petition only if the requirements described in 40 CFR part 261, appendix IX, table 1 and the conditions contained herein are satisfied.

D. How will John Deere Manage the Waste, when Delisted?

The delisted F006/F019 wastewater treatment sludge will be disposed of in a Subtitle D landfill which is permitted, licensed or otherwise authorized by a state to manage industrial waste.

E. When is the Final Delisting Exclusion Effective?

This rule is effective [insert date of **FEDERAL REGISTER** publication]. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA, 42 U.S.C. 6930(b)(1), allows rules to become effective in less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here

because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does this Final Rule Affect States?

EPA is issuing this exclusion under the Federal RCRA delisting program. Thus, upon the exclusion being finalized, the wastes covered will be removed from Subtitle C control under the Federal RCRA program. This will mean, first, that the wastes will be delisted in any State or territory where the EPA is directly administering the RCRA program (e.g., Iowa, Indian Country). However, whether the wastes will be delisted in states which have been authorized to administer the RCRA program will vary depending upon the authorization status of the States and the particular requirements regarding delisted wastes in the various states.

Some other generally authorized states have not received authorization for delisting. Thus, the EPA makes delisting determinations for such states. However, RCRA allows states to impose their own regulatory requirements that are more stringent than EPA's, under Section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state, or that

requires a state concurrence before the Federal exclusion takes effect, or that allows the state to add conditions to any Federal exclusion. We urge the petitioner to contact the state regulatory authority in each state to or through which it may wish to ship its wastes to establish the status of its wastes under the state's laws.

EPA has also authorized some states to administer a delisting program in place of the Federal program, that is, to make state delisting decisions. In such states, the state delisting requirements operate in lieu of the Federal delisting requirements. Therefore, this exclusion does not apply in those authorized states unless the state makes the rule part of its authorized program. If John Deere transports the federally excluded waste to or manages the waste in any state with delisting authorization, John Deere must obtain a delisting authorization from that state before it can manage the waste as non-hazardous in that state.

II. Background

A. What is a Delisting Petition?

A delisting petition is a request from a generator to EPA or to an authorized state to exclude or delist, from the RCRA list of hazardous wastes, waste the generator believes should not be considered hazardous under RCRA.

B. What Regulations Allow Facilities to Delist a Waste?

Under Sec. 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in Sec. 261.31 and 261.32. Specifically, Sec. 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste and that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Information and Data

A. What Waste did John Deere Petition EPA to Delist?

On January 28, 2014, John Deere (through its consultant) petitioned EPA to exclude from the lists of hazardous waste contained in Section 261.31 and 261.32, F006/F019 wastewater

treatment sludge, generated from its John Deere Des Moines facility in Ankeny, Iowa.

B. How Much Waste did John Deere Propose to Delist?

John Deere requested that EPA grant an exclusion for 600 cubic yards per year of F006/F019 wastewater treatment sludge.

C. How did John Deere Sample and Analyze the Waste Data in This Petition?

To support its petition, John Deere submitted: (1) Facility information on production processes and waste generation processes; (2) initial Filter Cake composite sample analytical results to determine constituents of concern (COC); and (3) Analytical results from six composite samples of Filter Cake for the COC. The initial sample was analyzed for EPA's list of hazardous constituents in 40 CFR part 261, Appendix VIII, pesticides, PCBs. The COC selected from the initial composite sample results are barium, chromium, hexavalent chromium, copper, lead, mercury, nickel, vanadium, zinc, cyanide, acetone and methyl ethyl ketone. Both total and leachable concentrations of the COC in the Filter Cake were determined.

John Deere generated the sampling data used in the Delisting Risk Assessment Software (DRAS) under a Sampling Plan and Quality Assurance Project Plan (June 2012 Revision). EPA believes that the sampling procedures used by John Deere satisfy

EPA's criteria for collecting representative samples of the F006/F019 waste.

IV. Public Comments Received on the Proposed Exclusions

No comments were received during the comment period.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to Sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in Section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism," (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of Section 12(d) of the

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by Section 3 of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from Section 801 the following types of rules (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under Section 801 because this is a rule of particular applicability. Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make

environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The Agency's risk assessment did not identify risks from management of this material in a Subtitle D landfill. Therefore, EPA believes that any populations in proximity of the landfills used by this facility should not be adversely affected by common waste management practices for this delisted waste.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f), RCRA, 42 U.S.C. 6921(f).

Dated: November 11, 2014.

Karl Brooks,
Regional Administrator,
Region 7.

For the reasons set out in the preamble, EPA amends 40 CFR part 261 as follows:

PART 261--IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX to part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261--Wastes Excluded Under §§260.20 and 260.22.

Table 1--Wastes Excluded From Non-Specific Sources

Facility	Address	Waste description
* * * * *		
John Deere Des Moines Works of Deere & Company	Ankeny, IA	<p>Wastewater Treatment Sludge Filter Cake (WWTS Filter Cake) (Hazardous Waste No. F006/F019) generated from combined onsite wastewater treatment at the Ankeny, IA, facility wastewater treatment plant at a maximum annual rate of 600 tons per calendar year and disposed of in a Subtitle D Landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted WWTS Filter Cake.</p> <p>John Deere must implement a testing program that meets the following conditions for the exclusion to be valid:</p> <p>1. Delisting Levels: (A) The WWTS Filter Cake shall not exhibit any of the "Characteristics of Hazardous Waste in 40 CFR 261, Subpart C. (B) All TCLP leachable concentrations (40 CFR 261.24(a)) for the following constituents must not exceed the following levels (mg/L for TCLP): Arsenic - 5.0; Barium - 100.0; Cadmium - 1.0; Chromium - 5.0; Lead - 5.0; Mercury 0.2; and, Nickel - 32.4. (C) EPA SW-846 Method 1313 Extraction at pH 2.88, 7 and 13 concentration of Chromium (hexavalent) must not exceed (mg/l) 0.087. (D) All total concentrations for the following constituents must not exceed the</p>

		<p>following levels (mg/kg): Antimony - 103; Arsenic - 52; Barium - 965; Beryllium - 21; Cadmium - 10; Chromium (total) - 22,500; Cobalt - 11; Copper - 1439; Lead - 437; Nickel - 1,515; Selenium - 52; Silver - 26; Thallium - 52; Tin - 68; Vanadium - 380; Zinc - 5,085; Mercury - 1; Chromium (hexavalent) - 20; Cyanide - 3, Oil and Grease - 32,250; Acetone - 8; Methyl Ethyl Ketone (MEK) - 0.3.</p> <p>2. Waste Handling and Holding: (A) John Deere must manage as hazardous all WWTS Filter Cake generated until it has completed initial verification testing described in paragraph (3)(A) and valid analyses show that paragraph (1) is satisfied and written approval is received from EPA. (B) Levels of constituents measured in the samples of the WWTS Filter Cake that do not exceed the levels set forth in paragraph (1) for two consecutive quarterly sampling events are non-hazardous. After approval is received from EPA, John Deere can manage and dispose of the non-hazardous WWTS Filter Cake according to all applicable solid waste regulations. (C) Notwithstanding having received the initial approval from EPA, if constituent levels in a later sample exceed any of the Delisting Levels set in paragraph (1), from that point forward, John Deere must treat all the waste covered by this exclusion as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1). John Deere must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance.</p> <p>3. Verification Testing Requirements: John Deere must perform sample collection and analyses in accordance with the Quality Assurance Project Plan submitted with the "John Deere Des Moines, Iowa, Sampling and Analysis Plan for Delisting of F006 and F019 Filter Cake, June 2012." All samples shall be representative composite samples according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1313, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the John Deere sludge are representative for all constituents listed in paragraph (1). To verify that the waste does not exceed the specified delisting concentrations, for one year after the final</p>
--	--	---

		<p>exclusion is granted, John Deere must perform quarterly analytical testing by sampling and analyzing the WWTP sludge as follows: (A) Quarterly Testing: (i) Collect two representative composite samples of the WWTs Filter Cake at quarterly intervals after EPA grants the final exclusion. The first composite samples must be taken within 30 days after EPA grants the final approval. The second set of samples must be taken at least 30 days after the first set. (ii) Analyze the samples for all constituents listed in paragraph (1). Any waste regarding which a composite sample is taken that exceeds the delisting levels listed in paragraph (1) for the sludge must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements from the time that John Deere becomes aware of any exceedance. (iii) Within thirty (30) days after taking each quarterly sample, John Deere will report its analytical test data to EPA. If levels of constituents measured in the samples of the sludge do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, and EPA concurs with those findings, John Deere can manage and dispose the non-hazardous sludge according to all applicable solid waste regulations. (B) Annual Testing: (i) If John Deere completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), John Deere may begin annual testing as follows: John Deere must test two representative composite samples of the WWTs Filter Cake (following the same protocols as specified for quarterly sampling, above) for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iii) John Deere shall submit an annual testing report to EPA with its annual test results, within thirty (30) days after taking each annual sample. The annual testing report also shall include the total amount of waste in tons disposed during the calendar year.</p> <p>4. Changes in Operating Conditions: If John Deere significantly changes the manufacturing or treatment process described in the petition, or the chemicals used in the manufacturing or treatment process, it must notify the EPA in writing and may no longer handle the WWTs Filter Cake generated from the new process as non-hazardous unless and until the WWTs Filter Cake is shown to meet the delisting levels set in paragraph(1), John Deere demonstrates that no new hazardous constituents listed in appendix VIII of part 261 have been introduced, and John Deere has received written approval from EPA to manage the</p>
--	--	--

		<p>wastes from the new process under this exclusion. While the EPA may provide written approval of certain changes, if there are changes that the EPA determines are highly significant, the EPA may instead require John Deere to file a new delisting petition.</p> <p>5. Data Submittals and Recordkeeping: John Deere must submit the information described below. If John Deere fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). John Deere must: (A) Submit the data obtained through paragraph (3) to the Chief, Waste Remediation and Permits Branch, US EPA Region 7, 11201 Renner Boulevard, Lenexa KS 66219, within the time specified. All supporting data can be submitted on CD-ROM or some comparable electronic media; (B) Compile, summarize, and maintain on site for a minimum of five years and make available for inspection records of operating conditions, including monthly and annual volumes of WWTS Filter Cake generated, analytical data, including quality control information and, copies of the notification(s) required in paragraph (7); (C) Submit with all data a signed copy of the certification statement in 40 CFR 260.22(i)(12).</p> <p>6. Reopener: (A) If, any time after disposal of the delisted waste, John Deere possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other relevant data to the delisted waste indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration, then John Deere must report such data, in writing, to the Chief, Waste Remediation and Permits Branch, US EPA Region 7, 11201 Renner Boulevard, Lenexa KS 66219 within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, the Regional Administrator, EPA Region 7, will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify John Deere in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and</p>
--	--	--

		<p>a statement providing John Deere with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. John Deere shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days John Deere presents no further information or after a review of any submitted information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.</p> <p>7. Notification Requirements: John Deere must do the following before transporting the delisted waste: A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.</p>
* * * * *	* * * * *	